

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 James R. Stork)
 Stork Investments, Inc. d/b/a) MUR 5517
 "Stork's Bakery")
 Stork's Las Olas, Inc.)
 Jim Stork for Congress and William C.)
 Oldaker, in his official capacity as treasurer)

GENERAL COUNSEL'S REPORT #3

I. ACTIONS RECOMMENDED

Accept the attached signed conciliation agreement with Respondents James R. Stork, Stork Investments, d/b/a "Stork's Bakery," Stork's Las Olas, and Jim Stork for Congress and William C. Oldaker, in his official capacity as treasurer, ("the Committee") and close the file.

II. BACKGROUND

James R. Stork, a 2004 candidate for Congress in Florida's 22nd Congressional District, is also the president of Stork Investments, d/b/a "Stork's Bakery" and Stork's Las Olas ("Stork's bakeries"). The Commission previously found probable cause to believe that Stork's bakeries made prohibited in-kind corporate contributions, that James R. Stork consented to the contributions, and that the Committee had knowingly accepted the contributions, all in violation of 2 U.S.C. § 441b(a). Because these contributions were not disclosed by the Committee, the Commission also found probable cause to believe that the Committee violated 2 U.S.C. § 434(b). In addition, the Commission found probable cause to believe that the Committee violated 2 U.S.C. § 434(b) by misreporting advances Stork made to the Committee. See General Counsel's Report #2. Certification dated November 14, 2007.

1 The factual basis for the section 441b violation is the Stork's bakeries' payments with
2 corporate funds for two broadcast advertisements and approximately 25,500 pieces of direct mail
3 advertising containing Stork's name and image, which were disseminated and distributed in
4 Florida's 22nd Congressional District within 120 days before Florida's 2004 primary election.¹
5 The Stork's bakeries' television and direct mail advertisements satisfied all three prongs of the
6 "coordinated communications" test at 11 C.F.R. § 109.21. The bakeries, not Stork, paid for the
7 communications, thus satisfying the "payment source" prong of the coordination test at 11 C.F.R.
8 § 109.21(a)(1); the advertisements were "public communications" distributed by cable television
9 and disseminated by mass mailings, 11 C.F.R. §§ 100.26 and 100.27, Stork's name and image
10 appeared in them, and they were distributed and disseminated in Florida's 22nd Congressional
11 District, within 120 days before Florida's 2004 primary election, which fulfilled the "content"
12 standard prong at 11 C.F.R. § 109.21(c)(4); and Stork was "materially involved" with the
13 advertisements, thus satisfying the "conduct" prong at 11 C.F.R. § 109.21(d)(2).²
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¹ Although the communications in question were ostensibly business advertisements, as the Commission has recognized, the coordination regulations establish a "bright-line test" and there is no exemption therein for ostensible business advertisements. In this matter, the cable television spots featured Stork holding a bakery product and stating, "I'm Jim Stork. Come find out why Stork's Bakery and Café means quality you can trust." Respondents presented no evidence of prior bakery announcements with the slogan "quality you can trust." Indeed, although Respondents represented that Stork ran cable television advertisements in connection with the opening of his first bakery in 1998, they presented no evidence that Jim Stork appeared live, or even in photographs, in those advertisements or in any other bakery announcements prior to the ones in issue. Moreover, the advertisements and Stork's campaign used similar logos of a silhouetted stork in a top hat. Some of the direct mail advertisements, which pictured and identified Stork by name, used the same photograph of Stork as used in his campaign literature, superimposed, respectively, on backgrounds picturing a bakery and the U.S. Capitol Dome.

² The activity in this case took place in June and July of 2004, within 120 days before Florida's August 31, 2004 primary election, thus satisfying 11 C.F.R. § 109.21(c)(4), the "content" standard then in force. See General Counsel's Report #2; n. 3. The advertisement were also disseminated or distributed within the reduced 90-day time frame for coordinated communications for House and Senate candidates under 11 C.F.R. § 109.21(c)(4)(i), which the Commission promulgated in 2006.

For the reasons discussed herein, we recommend that the Commission accept the attached
conciliation agreement (Attachment 1) and close the file.

III. DISCUSSION

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For the foregoing reasons, we recommend that the Commission accept the signed

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conciliation agreement with James R. Stork, Stork Investments, Inc. d/b/a "Stork's Bakery,"

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Stork's Las Olas, Inc., and Jim Stork for Congress and William C. Oldaker, in his official

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capacity as treasurer, and close the file.

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IV. RECOMMENDATIONS

1. Accept the attached conciliation agreement with James R. Stork, Stork Investments, Inc. d/b/a "Stork's Bakery," Stork's Las Olas, Inc., and Jim Stork for Congress and William C. Oldaker, in his official capacity as treasurer.
2. Close the file.
3. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

9/22/08
Date

BY:


Ann Marie Terzaken
Associate General Counsel for Enforcement


Susan L. Lebeaux
Assistant General Counsel


Ruth I. Heilizer
Attorney

Attachments:

1. Signed Conciliation Agreement